CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute the service/maintenance agreement for Data 911 ($80,000)

MEETING DATE: July 19, 2006

PREPARED BY: Jerry J. Adams, Chief of Police

RECOMMENDED ACTION: Authorize the City Manager to execute the Service/Maintenance Agreement for the police computerized information systems with Data 9-1-1 and authorize payment using funds as appropriated in the 2006-2007 police department operating budget ($80,000).
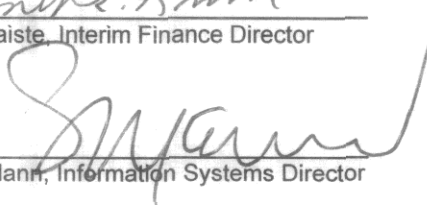
BACKGROUND INFORMATION: Over the past five years the Lodi Police Department has purchased new computer systems from Data 9-1-1, consisting of Computer Aided Dispatch, Records Management System, Report Writing and Mobile Data Computers. With the systems in place, a maintenance agreement is needed to provide for receiving software upgrades/updates no longer covered under a warranty. This maintenance agreement will expire on June 30, 2007. This is an annual agreement and is included in the police department operating budget, as it has been in past years.

FISCAL IMPACT: $79,067.15 from the 2006-2007 Police Department Operating Budget will be expended for the maintenance contract to Data 9-1-1.
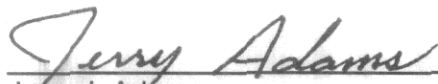
FUNDING AVAILABLE: Police Department Operating Budget: 101031.7335

Ruby Paiste, Interim Finance Director

Steve Mann, Information Systems Director

Jerry J. Adams
Chief of Police

JJA:sm
Attachments
cc: City Attorney

APPROVED: _____
Blair King, City Manager

SOFTWARE ENHANCEMENT AND SERVICES AGREEMENT

This Agreement is made as of   July 1ˢᵗ, 2006 at Lodi, San Joaquin County, California, by and between Hubb Systems, LLC DBA Data911 and the City of Lodi, a municipal corporation (Lodi Police Department) (Client).

1.   SOFTWARE. Subject to the terms and conditions set forth in this Agreement, Data911 shall provide services hereinafter described with respect to Client's application software identified in Exhibit "A" attached hereto and made a part hereof by this reference.

2.   PAYMENT. Client shall pay Data911 for services rendered as specified in Exhibit "A". Payment shall be made directly to Data911 as specified in Exhibit "A". Data911 shall submit all billings for said services to Client in the manner specified in Exhibit "A".

3.   SERVICE. Data911 offers this software enhancement and services agreement and promises to provide the services detailed in Exhibit "B" attached hereto and made a part hereof by this reference.

4.   TERM. Upon signature of this Agreement and payment as required in Exhibit "A" of this Agreement, the Agreement will be in full force and effect through the Agreement expiration date as described in Exhibit "A".

5.   EXHIBITS. All exhibits referred to herein are attached hereto and are by reference incorporated herein as though set forth in full. Exhibit "A" includes a complete list of the software modules, fees for services, charges, commencement date, term of service, billing procedures and payment methods, which shall be covered under this agreement. Exhibit "B" Statement of Work details the services to be performed, non-chargeable services, chargeable services, levels of service. Exhibit "C", attached hereto and made a part hereof by this reference, refers to General Terms and Conditions of this Agreement.

Effective as of this day first above-stated.

_____   _____
CITY OF LODI, A MUNICIPAL CORPORATION   **DATE**
BLAIR KING, CITY MANAGER

_____   _____
DATA911 SYSTEMS   **DATE**

APPROVED AS TO FORM:
JANICE D. MAGDICH, DEPUTY CITY ATTORNEY

_____

EXHIBIT A

I.   Software Modules – Schedule of Annual Retainer Fees

Initial Quote				
Data911 Software				
1	CAD Server	CAD Server License	$4,750.00	$4,750.00
5	CAD	CAD Seat License	$3,350.00	$16,750.00
1	RPW/RMS Server	RMS/RPW Server License	$3,570.00	$3,570.00
1	RPW/RMS	RPW/RMS Site license	$11,210.00	$11,210.00
1	RX Server	RX Mobile Server	$4,750.00	$4,750.00
24	RX Mobile	RX Mobile Seats	$315.50	$7,572.00
1	ECOMM Server	ECOMM Server	$4,670.00	$4,670.00
3	ECOMM	ECOMM Seat License	$264.00	$792.00
24	MX	MX Seat License	$92.50	$2,220.00
1	Message Switch	Message Switch License	$4,750.00	$4,750.00
1	DOJ CLETS	DOJ CLETS Interface License	$3,570.00	$3,570.00
1	E911	E911 License	$3,570.00	$3,570.00
1	discount	Returning agency discount 10%	$6,135.66	($6,817.40)
Third Party Software				
1	ORACLE	Oracle Server License	$5700.00	$5700.00
30	Ora lite	Oracle Lite Seat License	$23.00	$690.00
1	VMS	VMS O/S Licensing	$2,200.00	$2,200.00
1	Hummingbird	Hummingbird NFS License	$165.00	$165.00
Data911 MDS Maintenance				
26	MDS	MDS Maintenance	$276.00	$7176.00
5	MDS	MDS Maintenance	$253.00	$1265.00
Sales Tax				
1	Sales Tax	Sales Tax	N/A	N/A
Data911 2006 – 2007 ESA total				
			$78,552.60	$78,552.60

Extended Service Agreement		
1	ESA YR 1	Extended Services Maintenance and Support – (7/24 support per contract)	Included in Initial Quote

II.   FEES FOR SERVICE

1. Fixed Annual Retainer Fee. Client shall pay Data911 the annual retainer fee, in the amount shown on this Exhibit A, which will be payable within 30 days of billing.
2. Fees based on time. All services requested by Client, which are not provided under the terms of this Agreement, shall be billed at Data911's then current rate. All amounts so billed shall be payable within 30 days after the invoice date.
3. This Agreement shall cover only application software modules described in this Exhibit A which were designed and/or installed by Data911 and which have not and will not be altered or enhanced by any entity (including Client) without the express prior written consent of Data911, such consent not to be unreasonably withheld. In the event of Client's use of additional application software designed and installed by Data911 or if additional hardware is connected or in any way interfaced to Client's computer system as described in this Exhibit "A", Data911 shall have the right to increase its fixed retainer fee and such increase shall be retroactive to the date of such respective first use or connection. Client shall give Data911 prompt written notice of any such connection.
4. In addition to the amounts payable by Client above, Client shall pay to Data911 all taxes and levies imposed on or with respect to this Agreement, the services performed or the fees paid hereunder (except for taxes based on net income).
5. Support fees for third party products will be billed in conjunction with the annual retainer fee.

III.   PRICE CHANGES

Total price is subject to change upon the addition or deletion of software and hardware, or thereafter the anniversary date of this agreement, upon 90 days written advance notice.

IV.   COMMENCEMENT DATE

Commencement date shall be 30 days after the installation of the final software module in the Lodi Police Department.

Inclusion of a newly installed module shall be invoiced to Client the first month following the module acceptance by Client. In subsequent "contract" years the additions will be included in the Schedule of Fees. Invoicing for a newly installed module and for contracts commencing other than the Client's fiscal year shall reflect the formula of monthly equivalent fee for the module multiplied by the remaining number of months in the "contract" year.

V.   TERM

1. The term of this Agreement shall be for twelve months commencing on the date specified in this Exhibit A and shall continue from year to year thereafter, but shall be terminable by either party at the end of any contract year upon written notice given thirty days prior to the end of any contract year.
2. This Agreement may by terminated by either party upon ten days notice to the other in the event of any material default hereunder by the other party.
3. This Agreement may be terminated by Data911 if the application software is altered or enhanced by any entity (including Client) other than Data911, anything to the contrary herein notwithstanding.

4. No termination hereunder shall release Client from its obligation to make payment for services rendered through the date of termination.

VI.   Billing Procedures and Payment Method

1. Client shall pay Data911 for services rendered based on the costs and terms as specified. Payment shall be made directly to Data911 for services rendered pursuant to this Agreement. Data911 shall submit an invoice for said services to Client at the address listed below:

Authorized Contact Person:	**Abigail Baker**
Agency Name:	**Data911 Systems**
Address:	**2021 Challenger Drive**
City, State Zip:	**Alameda CA 94501**
Phone:	**510-865-9100 x120**
Fax:	**510-865-9090**
Email:	**abigail.baker@data911.com**

EXHIBIT B

I.   SERVICES TO BE PERFORMED

Data911 agrees to provide Client during the term of this Agreement, under the fees scheduled herein and subject to the provisions set forth below, the services hereinafter described with respect to Client's application software.

1. For Data911 Software Products, a two-hour response time during normal business hours (Monday – Friday, 0900 – 1700, excluding holidays) for emergency support requests. An emergency is defined as an application failure of the software defined in Exhibit A, attached hereto and made a part hereof, response is defined as the point in time when Data911 begins diagnosis of the reported problems. Client shall use the method of communication that is identified by Data911 for emergency service requests. Modem on-line software technical support service shall be used when applicable. Data911 shall provide 24-hour response time for on-site software emergency service, when required. Travel and accommodations charges incurred will be billed to Client. Data911 will keep travel costs to a minimum whenever possible.
2. Provision of media and for all new releases/modifications to the software modules listed in Exhibit A at no additional cost to Client. Installation, conversion of data, and training will be charged at a quoted hourly/not to exceed rate at the election of Client. Installation to take place between the hours of 0800 – 1700 Monday through Friday excluding holidays. Installation taking place on the weekends or after hours will be billed at the current published rate plus $100/hour with a minimum of 4 hours.
3. Telephone consultation regarding:

    (a) Questions related to public safety data practices and procedures.

    (b) System administration consultation and assistance; e.g. paper flow and retention.

    (c) Exceptions to Standard Procedures.

    (d) Modification of Client's computer software or purchase of additional hardware.

II.   NON-CHARGEABLE SERVICES

1. There shall be NO CHARGE for any minor or maintenance releases to Data911's Software. Maintenance releases include issue fixes. Maintenance releases are typically scheduled twice a year. Major releases are typically scheduled one every other year as identified by Data911. All minor, maintenance, and major releases will be implemented depending on Data911 and client resource availability.

III.   CHARGEABLE SERVICES

1. Items listed below are not under Data911's control, and are therefore chargeable. Client will be billed at Data911's then-current rate or a fixed charge to be agreed upon.

    Examples:

    Assistance with software not written by Data911, including but not limited to:

- MS Office
- Word Processing

Operator Error:

- Recovery of lost data caused by hardware or operator error
- Requests of deletion of Reports due to incorrect information input by users
- Requests to change information contained within the database entered incorrectly by user

Incorrect workflow:

- Assistance due to failure to follow prescribed procedures
- Assistance due to failure to exercise normal care in data processing

Server Hardware, Client Hardware and/or software:

- Upgrading of client hardware (desktops/laptops)
- Installation of new operating system on client hardware
- Installation of critical patches for Microsoft components.
- Installation of software not written by Data911

Oracle Database:

- Assistance with recovery of Database due to user error (e.g., causing a database to need recovery due to an improper system shutdown)
- Assistance with patching of Oracle software if not purchased from Data911

Research, review, and revision of operational work.

Retraining on Data911 modules already operational

Additional copies of software documentation:

- One digital copy and CD will be provided

Installation:

- Installation of additional hardware
- Installation of additional Data911 software
- Installation of Data911 software upgrades

Cabling:

- To be quoted at published rates

*   **Data911 time is chargeable in 1 hour increments for chargeable services requested/completed during normal business hours (8-5 Monday – Friday, excluding holidays).**

*   **Additional time outside the hours of 8-5 Monday –Friday, excluding holidays will be charged at the published rate plus $100/hour with a 4 hour minimum, dependant on resource availability.**

*   **Travel and accommodations charges for on-site service calls will be billed to Client with an administrative fee of 5% of cost.**

EXHIBIT C

I.   GENERAL

1. Data911 shall have full, Client-controlled, access to Client's computer system for purposes of performing its obligations under this Agreement. A 56K Baud Modem, VPN, and supporting telephone facility and services are to be supplied by the Client.
2. Custom programming for Client or special program modifications are not included under this Agreement.
3. At all times during the term of this Agreement, Data911 shall be an independent contractor and shall not be an employee of Client. Client shall have the right to control Data911 only insofar as the result of Data911's services rendered pursuant to this Agreement; however, Client shall not have the right to control the means by which Data911 accomplishes services rendered pursuant to this Agreement.
4. Data911 shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Data911's obligations pursuant to this Agreement.

    Neither Data911 nor Client shall be liable to the other for any delay or failure in performance on their respective obligations, other than the obligation to pay any monies to the other party when such monies are due and payable, as a result of an event of force majeure. For the purpose of this section, events of force majeure are defined to be (a) any act, delay, or failure to act on the part of any governmental authority, (b) acts of God, (c) accident or disruption caused by fire or explosion, (d) any act, delay, or failure to act on the part of any subcontractor of Data911, or (e) labor difficulties such as strikes or slowdowns; in all cases, the occurrence of which is beyond the reasonable control, and not caused by the negligence of, the party claiming an excuse for its delay or failure in performance. The time for performance shall be extended for a period equal to the period during which the event of force majeure, as described in this section, prevented performance. Notwithstanding any implication to the contrary herein, no event of force majeure shall excuse Data911 from its obligation to provide any hardware, software or services to the extent it may obtain such hardware, software or services from a source other than the source, including its subcontractors, it originally intended to use in sufficient quantity and within sufficient time to meet such obligations at no material additional expense.

5. Data911 shall have no liability whatsoever for general damages, extraordinary costs, loss of profits, or incidental, indirect, special or consequential damages (even of it has been apprised of the likelihood thereof) arising out of or in connection with Data911's obligations or performance hereunder or any breach hereof. In the event of Data911's material breach of this Agreement, Client may cancel this Agreement and refuse to pay Data911's invoice for the particular service which is the immediate subject of the breach, such rights being the sole and exclusive remedies available to Client. Delay or failure of performance by Data911 shall not constitute a breach hereunder where the same is due to any cause or condition beyond Data911's reasonable control.

    Data911 shall not be responsible for, and Client shall indemnify, defend and hold harmless Data911 from and against, and release Data911 from any claim by it with respect to, any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by or with respect to third parties, to the extent such arise from Client's negligence or willful misconduct.

6. Client shall be responsible for ensuring that all of its files are adequately duplicated on a current basis ("backed-up" as used in the trade) in accordance with the highest and most up-to-date standards of the computer industry and Client shall indemnify Data911 against Client's failure to do so.

7. If either party to this Agreement brings an action or proceeding at law or in equity to interpret this Agreement or any provision contained herein, or to seek damages or other redress for a breach, the prevailing party shall be entitled to recover in addition to all other remedies or damages, reasonable attorney's fees and costs incurred in such action or proceeding.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors and assigns.

9. Equal Employment Opportunity - During the performance of this Agreement, Data911 agrees as follows:

   A. Data911 will not discriminate against any employee or applicant for employment because of race, color, religion, or national origin. Data911 will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Data911 agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

   B. Data911 will, in all solicitations or advertisements for employees placed by or on behalf of Data911 state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

   C. Data911 will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to contracts or subcontracts or standard commercial supplies or raw materials.

10. Data911 AS AGENTS - Except as Client may specify in writing, Data911 shall have no authority, express or implied, to act on behalf of Client in any capacity whatsoever as an agent. Data911 shall have no authority, express or implied, pursuant to this Agreement to bind Client to any obligation whatsoever.

11. CHANGES - The Client may, from time to time, request changes in the Scope of Services of the Agreement to be performed hereunder. Such changes including any increase or decrease in the amount of Data911's compensation, which are mutually agreed-upon by and between the Client and Data911, shall be incorporated in written amendments to this Agreement signed by each of the parties hereto.

12. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Jurisdiction and venue of any action brought under this Agreement shall be in the County of San Joaquin.

13. Neither Data911 nor City shall be held to have waived any of the provisions hereof for failure to invoke any of the remedies available to them in the event of any breach by either Date911 or City of this Agreement. The waiver by Data911 or City of any provision of this Agreement shall not be deemed to be a waiver of any such provision on any subsequent breach of any other provisions.

14. All notices required or permitted to be given by either party to the other hereunder shall be in writing, sent by U.S. mail, postage prepaid, addressed to the other party at the address for it first above mentioned or to such other place as may have been given by similar notice by such other party. All notices shall be deemed given when properly posted except notice of change of address which shall be deemed given when received.

15. This instrument constitutes the complete and exclusive statement of the agreement between the parties and supersedes all contemporaneous and previous agreements and communications, oral or written, between the parties with respect to the subject matter of this Agreement. Any statement, agreement, representation or other communication or expression not contained herein is without authorization of, and shall not be binding on Data911. This Agreement may not be modified or supplemented except by an instrument duly executed on behalf of the then parties bound hereby including, if the same is a corporation, only by an officer thereof.

RESOLUTION NO. 2006-136

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE A
SERVICE/MAINTENANCE AGREEMENT WITH
DATA 911, AND FURTHER AUTHORIZING PAYMENT
OF FUNDS APPROPRIATED IN THE 2006-07 POLICE
DEPARTMENT OPERATING BUDGET

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WHEREAS, over the past five years, the Lodi Police Department has purchased new computer systems from Data 911, consisting of Computer Aided Dispatch, Records Management System, Report Writing, and Mobile Data Computers; and

WHEREAS, with the system in place, a maintenance agreement is needed to provide for receiving software upgrades/updates no longer covered under warranty for the period July 1, 2006 through June 30, 2007.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute service/maintenance agreement with Data 911 for computerized information systems; and

BE IT FURTHER RESOLVED that the City Council hereby authorizes payment of $80,000 from the 2006-07 Police Operating Budget.

Dated: July 19, 2006

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I hereby certify that Resolution No. 2006-136 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 19, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce,
                          and Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

JENNIFER M. PERRIN
Interim City Clerk

2006-136